



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Harold Ross, Esq.
Brotherhood of Locomotive
Engineers and Trainmen
1370 Ontario Street
Mezzanine
Cleveland, Ohio 44113-1702

MAY 04 2009

Re: MUR 6119
Brotherhood of Locomotive
Engineers and Trainmen (Local Division 662)

Dear Mr. Ross:

On November 5, 2008, the Federal Election Commission notified your client of a complaint alleging a violation of a section of the Federal Election Campaign Act of 1971, as amended. On April 30, 2009, the Commission found, on the basis of the information in the complaint, and information provided by respondent that there is no reason to believe the Local Division 662 of the Brotherhood of Locomotive Engineers and Trainmen violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

The Commission reminds respondent that section 441b(a) of the Federal Election Campaign Act of 1971, as amended ("Act") makes it unlawful for a labor organization to make a contribution or expenditure from its general treasury fund to any candidate, campaign committee, political party in connection with any election to federal office. 2 U.S.C. § 441b(a). However, the Act establishes specific exceptions to the general prohibition that allow a labor organization to make internal communications to its restricted class, sponsor a nonpartisan voter registration or get-out-the-vote campaign, or establish a segregated fund to be used for political purposes. See 2 U.S.C. § 441b(b)(2)(A)-(C); *see also* 11 C.F.R. Part 114.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

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The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

A handwritten signature in black ink, appearing to read "Sid Rocke", written over the typed name.

Sid Rocke

Assistant General Counsel

Enclosure

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****MUR 6119**

RESPONDENT: Local Division 662 – Brotherhood of Local
Engineers and Trainmen

I. INTRODUCTION AND FACTUAL OVERVIEW

The complaint in this matter alleges that Local 662 of the Brotherhood of Locomotive Engineers and Trainmen ("BLET") made a prohibited contribution to the "Democratic Party" by paying members with BLET dues money to "actively join and campaign for the Democratic Party" in violation of the Act. Complainant is a member of Local Division 662 and alleges that he received an email from BLET Local 662 State Chairman, Tim Smith, on October 4, 2008 asking for volunteers interested in helping the "Democratic Campaign." The email stated, in relevant part, "your expenses and a daily rate of \$235 will be covered by National." The email notes that the term "National" referred to the Teamsters National. It appears that the International Brotherhood of Teamsters ("IBT") merged with the predecessor union, Brotherhood of Locomotive Engineers on January 1, 2004 and became the Brotherhood of Locomotive Engineers and Trainmen.¹

¹ The FEC database indicates that the National Office of BLET has filed reports as an unauthorized committee. While there is no information to indicate that BLET has established a separate segregated fund, FEC records do reflect that IBT, with whom BLET is affiliated, has established a separate segregated fund (SSF) called Democrat Republican Independent Voter Education ("DRIVE").

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1 The Brotherhood of Locomotive Engineers and Trainmen is a Division of the Rail
2 Conference of the International Brotherhood of Teamsters. Its predecessor union, the
3 Brotherhood of Locomotive Engineers ("BLE"), was the senior national labor
4 organization in the United States and also North America's oldest rail labor union. See
5 <http://www.ble.org>. BLE merged with the International Brotherhood of Teamsters and
6 became BLET on January 1, 2004. BLET's total membership is more than 59,000, and
7 the local units are known as divisions, which each elect four primary local officers. The
8 National Division is located in Cleveland, Ohio, and the local Division 662 is located in
9 Los Angeles, California.

10 Complainant asserts that it is illegal for a labor union to make a contribution to a
11 federal campaign, and the email stating that BLET would pay members to campaign for
12 the Democratic Party is evidence of the prohibited contribution. In addition, it appears
13 that Complainant disagreed with BLET's decision to support then-presidential candidate,
14 Barack Obama.

15 In response to the complaint, Respondent states that the email was written by the
16 Chairman of BLET California State Legislative Board and ultimately forwarded to the
17 local chairman of the Division 662 seeking volunteers to communicate with other
18 members in the 2008 presidential campaign. The email was then sent to Complainant, as
19 a member of BLET and the Local Division 662. Respondent asserts that BLET is
20 permitted to use general treasury funds to defray the costs of communications with its
21 members and families, on any subject, including expressly advocating the election or
22 defeat of federal candidates and officeholders." See also 2 U.S.C. § 431(9)(B)(iii);
23 11 C.F.R. § 114.3(a).

1 The response also includes a declaration from BLET's national secretary-treasury
2 confirming that all communications and subsequent communications by volunteers were
3 member-to-member communications. However, the response does not address the issue
4 of whether the funds used to pay the expenses and daily rate for those members who
5 volunteered were covered by IBT, BLET, or some other entity. In addition, neither the
6 response nor the declaration provides any details regarding the specific type of volunteer
7 activity involved, such as whether the activity took place during work hours.

8 We provided Respondent with the opportunity to provide further information
9 regarding the source of the payment and expenses paid to those members who
10 volunteered for the "Democratic Campaign" effort referred to in the complaint. In
11 response, the Respondent informed us that "no local 662 member volunteered to
12 participate in the member-to-member information campaign, and accordingly, no
13 payments were made by BLET to any Local 662 member."

14 II. LEGAL ANALYSIS

15 It is unlawful for a labor organization² to make a contribution or expenditure from
16 its general treasury fund to any candidate, campaign committee, or political party in
17 connection with any election to federal office. *See* 2 U.S.C. § 441b(a). In addition, any
18 officer or director of any labor organization is prohibited from consenting to such
19 contributions or expenditures. *Id.* For purposes of Section 441b, a "contribution"
20 includes "any direct or indirect payment, distribution, loan, advance, deposit, gift of
21 money, or any services, or anything of value" made to a candidate, including all in-kind

² The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employees concerning grievances, labor disputes, wages, rate of pay, hours of employment or conditions of work. 2 U.S.C. § 41b(b)(1).

1 contributions. 2 U.S.C. § 441b(b)(2) and 11 C.F.R. § 100.7(a)(1)(iii)(B). The term
2 "expenditure" is defined to include "any purchase, payment, distribution, loan, advance,
3 deposit, or gift of money or anything of value, made by any person for the purpose of
4 influencing an election for Federal office." *See* 2 U.S.C. § 431(9)(A)(i).

5 However, the Act establishes specific exceptions to the general prohibition that
6 allow a labor organization to make internal communications to its restricted class,
7 sponsor a nonpartisan voter registration or get-out-the-vote campaign or establish a
8 segregated fund to be used for political purposes. *See* 2 U.S.C. § 441b(b)(2). In
9 particular, the regulations provide that labor organizations can make communications, on
10 any subject, including communications containing express advocacy to their restricted
11 class or any part of that class. *See* 11 C.F.R. § 114.3(a). A labor union's restricted class
12 "is it members, and executive or administrative personnel and their families." *See*
13 11 C.F.R. § 114.1(j). Labor organizations can even make communications permitted
14 under Section 114.4 to their restricted class or any part of the class. *See* 11 C.F.R.
15 § 114.4. The activities permitted under Section 114.4 may involve election-related
16 coordination with candidates and political committees. 11 C.F.R. § 114.4; *see also*
17 11 C.F.R. § 100.16 and 114.2(c) regarding independent expenditures and coordination
18 with candidates.

19 According to the response and the affidavit, the email communication at issue was
20 sent to members of the Local Division 662, of which Complainant is included, and not to
21 the general public. The Complainant does not allege anything to the contrary. In
22 addition, it appears that any subsequent communications that occurred in response to the
23 request for volunteers were only between members of BLET. The regulations clearly

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1 permit a labor organization to use its general treasury funds for this purpose, including
2 communications that expressly advocate for the election or defeat of a candidate or
3 officeholder. *See* 11 C.F.R. § 114.3(a). Accordingly, it was permissible for BLET to
4 use its general treasury funds to send communications to its members seeking volunteers
5 to aid in the effort to elect a presidential candidate and to make subsequent member-to-
6 member communications in support of this effort with no resulting violation of the Act.
7 *Id.* Furthermore, there is no information indicating that the Respondent provided
8 payments to volunteers for campaign activities.

9 Accordingly, the Commission found no reason to believe that Local Division 662-
10 Brotherhood of Local Engineers and Trainmen violated 2 U.S.C. § 441b of the Act.

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